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## SENATE....No. 63.

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### Commonwealth of Massachusetts.

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IN SENATE, *Feb. 22, 1842.*

The Joint Special Committee to whom was committed the petition of Francis Jackson and others, and sundry other petitioners, for a law securing to colored persons equal rights in rail-road accommodation:—also the remonstrance of Joseph Nunn, and sundry others, of Salem, respectfully submit the subjoined

### REPORT:

The circumstances which give rise to these petitions, are matters of common notoriety throughout the State. While some of the rail-road corporations (as for example, the Western, Nashua, Boston and Portland, Norwich, Lowell, and Worcester,) make no distinction among the passengers, but permit every well-behaved person to purchase such ticket, whether of the second or first class, as they choose; and then to select the car and seat which suit them;

others,—which are the Eastern Rail-road, Taunton and New Bedford, and Providence,—while they in some cases demand of the colored man their highest price, place him either, as on the Salem road in a decently furnished car by himself, or as in other cases, in cars oftentimes neither decent nor comfortable, and according to circumstances, exposed to the inclemencies of the season. The petitioners ask for some action on the part of the Legislature, by which the making of this distinction between colored and other citizens, shall be forbidden by law, and prevented by penalty. They base their request, not on the supposition that the colored man is not as well treated as his white fellow-citizen, but on the broad principle that the constitution allows no distinction in public privileges among the different classes of citizens of this Commonwealth.

That the distinction is made in the cases referred to, admits of no doubt. That it is a violation of his rights as a citizen, is equally undeniable:—that it is a disability which would be an insult to any white man, and which the whole nation would be ready to vindicate at the expense of her best blood and greatest treasure. It is inconsistent with that part of the first article of the declaration of rights in the constitution of our State, which declares “that all men are born free and equal, and have certain natural, essential, and unalienable rights, among which may be reckoned,” “that of acquiring, possessing and protecting property;” and “that of seeking and obtaining their safety and happiness.” The delay and difficulty the colored man experiences in travelling in public conveyances, frequently interfere with his acquiring property, when he wishes to pass from place to place on business. It interferes with his happiness when he travels for pleas-

ure, and he is deprived of the society of his friends if they chance to be of a different complexion.

The only questions for consideration seem to be, whether this matter lies within the authority of the Legislature, and whether any interference on its part is called for.

That it is the duty, as well as the right of the Legislature, to secure to each citizen, not only his own strict rights, but also the greatest possible benefit consistent with justice and the public good, is not to be questioned. These roads exist and derive all their rights and privileges from the authority of the Legislature. They are certainly to be regarded, so far as the citizens are concerned, as public highways, to the equal use of which, on certain conditions, every citizen is alike entitled. Responsible to the Legislature for their proceedings, as appears by their being required to exhibit an annual report of their doings, they are to be regarded in some sense as public servants, and imperatively bound to use the powers intrusted to them, as much for the public benefit as their own, in accordance with the spirit of our institutions, and the laws of the Commonwealth. Any invidious distinction between different classes of citizens, in consequence of difference in opinion, sex, color, sect, or other rightful and innocent peculiarity, is manifestly opposed to the spirit of our institutions. If passengers were separated because of difference in religious belief; if on the common highway certain persons were not permitted to travel without appearing in a particular dress, it would be regarded as ridiculous and an intolerable nuisance, to be immediately abated. Is color any more legal or reasonable ground of such distinction than creed? Massachusetts, throughout her whole code, with one exception, makes no distinction on account of color among her citizens. Her schools, her jury-box, her offi-

cial situations, are all open to all complexions. The word white, except in the militia, where she acknowledges the authority of the United States constitution, and the instance just named, is not found in her statute-book. Why should she allow corporations a power which she will not trust in her own courts? How shall the State be justified in allowing others to make differences in regard to her citizens, which she does not presume to make herself? If it should be objected, these by-laws are like the rules of social life, with which the law has nothing to do; we answer, these corporations are established by State authority, supported in some cases by State loans, protected always and specially by legislation, and their accommodations are a *right*, and not, like social enjoyments, a privilege: the *equal* right of all, not the peculiar privilege of any.

If it should be objected that the regulation is matter of taste, which the feelings of the majority of the community require,—we answer, individual taste is no criterion of rights; and even if the majority do agree in this particular, our institutions were established for the very purpose of protecting minorities from the tastes of majorities. That no real reason even of this kind exists, is evident from the fact that the majority of the rail-roads, and those too the largest, make no such distinction, and experience no inconvenience from the absence of it. Besides, even where this distinction has been made on some roads, your committee are informed that slaves have been permitted to ride with their masters unmolested, where a free colored person is refused a place. That under certain circumstances, color can be dispensed with; and therefore that such exclusion is unreasonable and unnecessary.

Your committee are of opinion that the rail-road corpo-



rations would most cheerfully submit to any regulation in this matter that should be agreeable to the Legislature. The Eastern Rail-road Company forbid a white man to take a seat in the car devoted to the use of the colored people ; we can see in this nothing but an unnecessary assumption of authority, which the people of this Commonwealth will not acquiesce in. If any shall object to taking action upon this subject because custom contrary to law will not be unnoticed by our courts of justice, and therefore an adequate remedy exists already for any person injured by these regulations ; we would say, that in many cases where rights were clear at common law, the Legislature has still enacted special statutes to secure the observance of such rights and protect them by penalties. As a case in point, we notice the protection of these very rail-roads from trespass by persons and cattle. Many criminal statutes are directed against cases which had long been known as offences at common law. Your committee are informed that in one case at least before the supreme court of this Commonwealth, under circumstances of much hardship, the judge permitted the prevalence of this custom of excluding colored men from the same accommodations with white passengers, to be given in evidence before the jury as defence against the party's claim for damages—the case of a Brazilian officer, whose invalid wife had been refused decent accommodations on board one of our steamboats, some few years since, because she was in part of African descent. The prevalence of this custom was pleaded by the company against his claim for damages, and that successfully. The irritation of feeling which such regulations produce, tending to constant breaches of the peace, is another reason for Legislative action. We need only allude to the recent

cases that have occurred in proof of this. Our courts recognize a limitation in the almost sacred freedom of the press, when it amounts to libel, because then it tends to breach of the peace,—certainly this instance of the same and still more imminent danger of that result, calls as loudly for the interference of the law. Certainly it cannot be out of the sphere of our duties to attempt such legislation as shall secure to all the inhabitants of the State the enjoyment of every right consistent with justice and the constitution. The committee unanimously report the accompanying bill.

Per order,

SETH SPRAGUE, Jr.



## Commonwealth of Massachusetts.

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IN SENATE, *Feb. 22, 1842.*

The same Joint Special Committee, to whom was committed the petitions of sundry persons praying for some action of the Legislature on the subject of the foreign slave trade, respectfully report the accompanying resolve.

Per order,

S. SPRAGUE, JR., *Chairman.*

## Commonwealth of Massachusetts.

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In the year One Thousand Eight Hundred and Forty-Two.

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### RESOLVE

Relating to the Foreign Slave Trade.

*Resolved,* That the senators and representatives of Massachusetts in the Congress of the United States be severally requested to use every exertion in behalf of a system of measures which shall have for its object a more complete suppression of the slave-trade upon the coast of Africa than has hitherto been effected, as well as the better protection of the American flag from the abuse of it practised on said coast, by persons carrying on a trade which the United States have solemnly declared to be piracy.

## Commonwealth of Massachusetts.

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SENATE, *Jan. 29, 1842.*

*Ordered,* That the Joint Special Committee on the petition of Francis Jackson and others, inquire whether any measures are necessary to be taken by this Legislature to secure to the citizens of this State the rights guaranteed to them by the constitution of the United States, when in other States of the Union.

Sent down for concurrence.

CHAS. CALHOUN, *Clerk.*

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HOUSE OF REPRESENTATIVES, *Jan. 29, 1842.*

Concurred.

L. S. CUSHING, *Clerk.*

## Commonwealth of Massachusetts.

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IN SENATE, *Feb. 22, 1842.*

The same Joint Special Committee to whom was committed an Order of January 19, and the petitions of sundry persons praying for some action of the Legislature on the subject of the imprisonment of citizens of this Commonwealth in other States where no crime is alleged, respectfully report the accompanying resolves.

Per order,

S. SPRAGUE, JR., *Chairman.*

## Commonwealth of Massachusetts.

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In the year One Thousand Eight Hundred and Forty-Two.

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### RESOLVE

Relating to the Imprisonment of Citizens of this Commonwealth in other States.

*Resolved*, That the imprisonment of any citizen of Massachusetts in the ports, harbors within the borders of other States of the Union, without the allegation of any crime committed by him, and solely on account of his color, constitutes a gross violation of the federal constitution, as well as of all the principles of rational liberty ; and that his excellency the governor be hereby authorized, in any case of the kind that may occur, to cause the legality of such imprisonment to be tried before the courts of the United States.











